

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

STEVEN J. ABRAHAM, *et al.*,

Plaintiffs,

v.

Civ. No. 09-00961 WDS/RLP

BP AMERICA-PRODUCTION COMPANY,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on two motions. Defendant BP America Production Company (BP) has served non-party ABQ Energy Group (ABQ Energy) with a subpoena duces tecum and ABQ Energy Group has refused to produce the requested documents. BP filed a Motion to Compel production on June 11, 2010. ABQ Energy then followed up with a Motion to Quash the aforementioned subpoena on June 28, 2010.

Subpoenas duces tecum are governed by Fed.R.Civ.P. 45, which provides in pertinent part that a party served with the subpoena has 14 days to serve their objections. Rule 45(c)(2)(B). The rule further provides that motions for protective orders or motions to quash must be "timely." Conversely, motions to compel may be made at any time. See Rule 45(c)(2)(B)(i).

In this district and circuit, objections must be filed with the court within 14 days of service of the subpoena. *Creative Gifts, Inc. v. UFO*, 183 F.R.d. 568, 570 (D.N.M. 1998) (citing *Wang v. Hsu*, 919 F.2d 130 (10th Cir. 1990)). Most courts that have addressed the issue find that a motion to quash must be filed within the time for compliance with the subpoena. See 9A C.A. Wright & A. Miller, *Federal Practice and Procedure*, § 2459 n.2 (3d ed. 2008 & 2010 Supp.)

From the documents submitted to the Court, it appears that no written objections were filed with the Court until June 28, 2010, which is also the time the Motion to Quash was filed. Accordingly, the Motion to Quash is untimely.

Also before the Court is Defendant's Unopposed Motion to File Under Seal its Becker Appendices B and C. The Court grants that motion.

IT IS THEREFORE ORDERED that the Motion to Compel Compliance with Document Subpoena to ABQ Energy Group [Doc. 84] is granted; and

IT IS FURTHER ORDERED that Motion of ABQ Energy Group to Quash Subpoena [Doc. 91] is denied and

IT IS FURTHER ORDERED that Defendant's Unopposed Motion to File Under Seal its Becker Appendices B and C [Doc. 101] is granted.

IT IS SO ORDERED.



Richard L. Puglisi
Chief United States Magistrate Judge